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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,250	02/09/2004	Michael J. Alberts	2270-001	7382
27522	7590	02/03/2006	EXAMINER	
SEAN W. GOODWIN 237- 8TH AVE. S.E., SUITE 360 THE BURNS BUILDING CALGARY, AB T2G 5C3 CANADA			COTTINGHAM, JOHN R	
			ART UNIT	PAPER NUMBER
			2116	

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/773,250	Applicant(s) ALBERTS, MICHAEL J.	
	Examiner John R. Cottingham	Art Unit 2116	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 and 14 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-11 is/are rejected.
- 7) ☒ Claim(s) 5 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/25/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by McKinnon U.S. Patent 1,545,909. McKinnon shows all of the claimed subject matter of a fence module in Figures 1-3.

Regarding claim 1, a unitary, stackable fence module comprising: two end supports, each end support having a substantially vertical member A connected at a lower end to a first end of a horizontal member 11 and an angle arm 9 connected between an upper end of the substantially vertical member and a second end of the horizontal member, the vertical and horizontal members A and 11 being in the same plane; and a plurality of span members 7 connected between the angle arm of each end support, spacing the end supports apart, wherein, the angle arm 9 is attached to an inside side edge of each of the substantially vertical and horizontal member adjacent the span members to permit stacking of two or more unitary fence assemblies for storage or transport, the angle arms of each successive module fitting between the horizontal and substantially vertical members of a previous module.

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Regarding claim 2, further comprising a spacer (as seen in Fig. 1) positioned between the angle arm 9 and the inside side edge of the vertical and horizontal members for providing additional tolerance between each modules for stacking.

Regarding claim 6, wherein the end supports and the span members are formed of tubular steel.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-4 and 8-11 rejected under 35 U.S.C. 103(a) as being unpatentable over McKinnon as applied to claim 1 above, and further in view of Faught U.S. Patent 300,455.

Regarding claim 3, McKinnon does not show a first end support and a second end support, each of the first and second end assemblies having attachment means attached to the vertical member to permit pivotal attachment to a subsequent fence module, wherein the attachment means on the second end support of a first module cooperate with the means on the first end support of the subsequent fence module; and the first module and subsequent module are rotatable about the pivotal attachment for forming a corner. However, Faught teaches the use of attachment means to permit pivotal attachment in figures 1-4, and seen between C and D to permit the fence to be set at different angles. It would have been will within the level of one of ordinary skill in

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the art at the time the invention was made to use the pivotal attachment, as taught by Faught, to allow the fence of McKinnon to be set at different angles.

Regarding claim 4, wherein the a pin and loops arranged along each vertical member so as to permit vertical alignment of the loops between the second end of the first fence module and the first end of the subsequent fence module to permit passage of the pin therethrough.

Regarding claim 9, McKinnon shows a modular fence system for forming a polygonal perimeter fence comprising: three or more stackable fence modules, each module comprising two end supports, each end support having a substantially vertical member A connected at a lower end to a first end of a unitary horizontal member 11, the vertical and horizontal members being in the same plane and an angle arm 9 connected between an upper end of the substantially vertical member and a second end of the horizontal member; and a plurality of span members connected between the angle arm of each end support, spacing the end supports attached to an inside side edge of each of the substantially vertical and horizontal apart, wherein, the angle arm 9 is member adjacent the span members to permit stacking of two or more unitary fence assemblies for storage or transport, the angle arms of each successive module fitting between the horizontal and substantially vertical members of a previous module. However, McKinnon does not show means for pivotal attachment, connected to each of the two end supports of each of the three or more fence modules, for pivotally connecting each of the three or more fence modules to an adjacent fence module for forming the

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perimeter fence. However, Faught teaches the means for pivotal attachment (hooks and loops).

Regarding claim 10, wherein the means for pivotal attachment on the second end support of a first module operates with the means for pivotal attachment on the first end support of a subsequent fence module', and the first module and subsequent module are rotatable about the pivotal attachment means for forming a corner.

Regarding claim 11, wherein the loops arranged along each means for pivotal attachment comprises a pin and vertical member A so as to permit vertical alignment of the loops between the second end of the first fence module and the first end of the subsequent fence module to permit passage of the pin therethrough.

Allowable Subject Matter

5. Claim 13-14 are allowed.
6. Claims 5 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

1. Applicant's arguments filed 11/23/05 have been fully considered but they are not persuasive. Applicant first argues that these claims were allowed by the Canadian Patent Office over the cited references. The examiner takes note of this, but does not agree. Applicant next argues that the angle arm as being attached to the inside side edge of each the substantially vertical and horizontal members. Here, Applicant has not

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defined which is the inside and which is the outside edges, and either edge of the McKinnon can be equated to the inside edge.

Next Applicant argues that McKinnon is not stackable, the examiner disagrees, the applicant only has the language as functional language in the claims, and is only given limited patentable weight. Next McKinnon is stackable if you put one on top of the other. They may not be stackable in a predetermined form, but the Applicant has not claimed that limitation.

Lastly, Applicant argues that neither side is substantially vertical, the examiner disagrees because the Applicant has not defined how "substantially vertical" they have to be, and they do extend in a vertical direction more than they extend in the horizontal direction, so it meets the claimed limitation.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (571) 272-7079. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571)272-3670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John R. Cottingham
Primary Examiner
Art Unit 2116

jrc